

**BEFORE THE
BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues
Against:

JANE TYE
220 E. Chapman Avenue, #35
Placentia, CA 92870

Respondent.

Case No. X46

OAH No. L2002020405

DECISION AND ORDER

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge (ALJ) of the Office of Administrative Hearings, at Los Angeles, California on June 18 and 19, 2002.

Barry Landendorf, Deputy Attorney General, represented the complainant. Respondent appeared in person and was represented by Stephen Frankel, Attorney at Law.

Oral and documentary evidence and evidence by way of stipulation and official notice was received and the matter then argued and thereafter submitted.

The Proposed Decision by ALJ Lopez was issued on July 15, 2002. On August 9, 2002, the Board issued a Notice of Non-Adoption of the Proposed Decision, and ordered the transcript of the hearing. Oral argument was heard on November 15, 2002 and the following Findings and Order are issued.

FINDINGS OF FACT

PARTIES AND JURISDICTION

1

Thomas S. O'Conner, complainant herein, filed the Statement of Issues in his official capacity as the Executive Officer of the Board of Psychology, Department of Consumer Affairs.

On July 26, 2001, Jane Tye, respondent herein, submitted an application for a psychologist and on July 31, 2001, submitted an application for a psychological assistant to the Board of Psychology. The applications were denied on or about September 12, 2001. Respondent was notified of the Board's determination and was advised of her appeal rights by letter dated September 12, 2000.

Respondent did timely appeal the denial of the application for a psychological assistant by letter of October 16, 2001. All jurisdictional requirements have been met. Jurisdiction for this proceeding does exist.

FINDINGS REGARDING THE STATEMENT OF ISSUES

Respondent has a history of criminal conduct-a number of petty thefts over a period of time in 1995 and 1996-and a history of mental illness. That mental illness (not specifically established by the evidence) resulted in psychiatric hospitalizations in 1983, 1985, 1995 and 1996.

As a result of those histories the Board, reasonably, required that respondent undergo a psychological examination prior to licensure as a psychological assistant.

Respondent was referred for psychological examination to evaluate her present ability to competently practice as a psychological assistant. Accordingly, respondent was interviewed by a licensed clinical psychologist (examiner) on September 4, 6, 18, and 20, 2001. The examiner administered the Personality Assessment Inventory, a psychosocial history questionnaire and health questionnaire.

The examiner also gleaned information from a number of respondent's past supervisors while respondent was employed as an intern. She also had a phone consultation with respondent's present therapist.

The purpose of the examination was not to diagnose respondent's present mental condition or to furnish the Board a current diagnosis but was to assess respondent's present ability to competently work as a psychological assistant.

That examination, thorough in nature, revealed in pertinent part the following analysis and discussion (opinions):

Findings: Dr. Tye is a 45 year-old Caucasian female who is pursuing registration as a psychological assistant. She is cautious and guarded in her statements, well dressed and well groomed. She is alert and oriented in all spheres. Her mood is euthymic and she displays a normal range of affect in interview. Her verbalizations are audible and she is cognitively intact. Her memory for recent and remote events is good and her working memory is good. She is able to maintain the focus of her attention and execute thoughts effectively. There is no indication of thought disorder or unusual perceptual phenomena. She is motivated and dedicated to providing mental health services to clients and looks forward to the responsibilities of a psychological assistant.

Being evaluated for licensure purposes would be stressful and anxiety-provoking for most applicants. Anxiety, tension, fearfulness, defensiveness and other coping strategies in various degrees and intensity would be natural responses during assessment and taken into consideration when making conclusions. Dr. Tye's emotional responses during this evaluation have been elevated to such a degree that it is my opinion that she is presently unable to be objective about herself and her experiences. It appears that she has interpreted this examination as a recapitulation of her victimization in childhood and later in her marriage. Her behavior demonstrated marked splitting and distortion of events throughout the examination. What I experienced as extreme guardedness and defensiveness impairs her ability to be accountable for her actions. When provided several opportunities to reflect upon her behaviors during the present assessment, as in testing of limits, she repeatedly fails to acknowledge her contribution to her negative experience. . . At no time did she take responsibility for being threatening or hostile and explained that she was merely frustrated and the examiner's reality was wrong.

Dr. Tye's behavior and presentation during this assessment has been markedly manipulative and, as such, I have experienced significant distortions in her reporting of facts and experiences and failure to recognize their potential effect on others.

The interview experiences that I have had with Dr. Tye reflect significant compromise in her present ability to evaluate data objectively. This compromise may be largely driven by characterologic factors. She is unable or unwilling to take responsibility for her feelings or behaviors and this would render potential consumers at significant risk. . .

The psychological analysis and opinions of the examiner, set forth in Finding 6 and competent and credible analysis and are competent and credible opinions in that the evidence established that:

- (1) The evaluator was qualified by reason of her background, training and experience to render opinion (expert) testimony;
- (2) The analysis and opinions are supported by information and matter that is reliable;
- (3) The analysis and opinions are supported by a psychological examination of the respondent accepted as reliable in the profession of psychology.
- (4) The analysis and opinions are based on recognizable psychological methods of examination.

With regard to the "distortion" and "guardedness" referenced in Finding 6, respondent does, from time to time, engage in unethical behavior as demonstrated by the following: (1) In her *curriculum vitae* (resume') she has in parenthesis "APA approved" following her master's degree and doctorate. The "APA (American Psychology Association) approved" information is false and was and is known by respondent to be false. (2) During the examination period, respondent did tape record the session of September 18, 2001 without the knowledge or consent of the examiner. Subsequently, on the advice of others, she did destroy the tape.

Notwithstanding Findings 6 and 8 respondent's recent work performance in the field of psychology demonstrates a record of concerned care as set forth in Finding 10 and respondent's recent academic work does demonstrate a record of competence as set forth in Finding 11.

(A) Respondent completed a "practicum" at USIU Department of Psychology in or about July, 1999. Her evaluations were, generally, "outstanding".

Certain of the comments of the evaluator follow:

Strong assessment skills. . . sensitive to clients. . . very effective! . . .
Strong intervention techniques. . . extremely professional. . .

(B) Respondent performed as a intern at Upland Community College. The evaluation covering the time period July-September 2000 was "good" to "superior".

Certain of the comments of the evaluator are as follows:

Empathic connection with clients greatly facilitates her knowledge of their experience. . .very through and accurate assessments. . . intakes are informative and comprehensive. . .

. . .has been an asset for clinicians' to consult with regularly. . .

(C) Respondent completed a psychology internship program for the County of San Bernardino, Human Services system in or about June, 2001. Her final evaluation (intern evaluation and experience summary) was exemplary. Certain of the comments in this evaluation follow:

. . .Jane has good understanding of clinical procedures and clients. . .

. . .applies (knowledge) very well. . .reports are very clear and gives a good clinical picture of the client. . .

. . .makes good testing choices. . .reports are written very professionally. . . good procedures and methods. . .

. . .very skillful in psychotherapy. . .behaves at times like a seasoned professional. . .

The comments of the various evaluators in Finding 10, though restricted to "administrative hearsay" and subject to certain hyperbole, are credible and competent opinions of respondent's work ethic and knowledge. The opinions are supported by reasonable inferences from the whole of the record.

11

Respondent has been on the faculty of Argosy University and, based on work performance in the classroom, was given an administrative position. She has been an effective teacher and administrator.

12

Respondent has been under the care of a therapist (licensed psychologist) since approximately 1992. The therapist, at first, addressed respondent's "unhealthy" marriage and depression (respondent would, subsequently, obtain a divorce). After a time the therapist diagnosed "dissociate identity disorder" (formerly "multiple personality disorder") a concept

001

avored by some psychologists disfavored by other psychologists and not scientifically defined. She is still under the care of the therapist and, on average, sees him twice a week. In the opinion of her therapist, in paraphrase, "the patient's nine alternate personalities have now integrated into the host personality, Jane." The therapist did indicate that respondent had in the past "integrated" and then, again "fragmented". Therapy is ongoing by the therapist and therapy, treatment and competent care is still warranted by the present therapist or by another therapist.

13

Despite two divorces, two cancers (lymphoma and melanoma), and histories of criminal conduct and mental illness respondent has prevailed in her pursuit of educational goals. Despite recent ethical lapses her testimony was forthright and her demeanor credible.

Respondent has recently married (May 11, 2002) and has two sons from a prior marriage, aged 23 and 21. She does meet all familial and parental responsibilities. One son is a law student at Loyola Law School and the other is pursuing an advanced degree at Loma Linda University. Her husband and her sons, together with certain of her colleagues, provide a strong and stable support group.

CONCLUSIONS OF LAW

1

Business and Professions Code (BPC) §2900 of the Psychology Licensing Law provides as follows:

The Legislature finds and declares that practice of psychology in California affects the public health, safety, and welfare and is to be subject to regulation and control in the public interest to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology.

2

BPC §2960.5 provides as follows:

The board may refuse to issue any registration or license whenever it appears that an applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. The procedures set forth in [BPC §820 *et seq.*] shall apply to any denial of a license or registration pursuant to this section.

6

BPC § 820 states in part:

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence. . . .

BPC § 822 provides as follows:

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take acting by any one of the following methods:

- (a) Revoking the licentiate's certificate or license.
- (b) Suspending the licentiate's right to practice.
- (c) Placing the licentiate on probation.
- (d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

The Board's determination that respondent undergo a psychological examination pursuant to BPC § 820 was reasonable, proper and prudent and a proper exercise of the Board's discretion.

Cause exists pursuant to BPC §§ 2960.5, 820 and 822, to deny respondent's application for an unrestricted registration by reason of Findings 6 and 7. However, by reason of Findings 10, 11 and 13 the public interest referenced in BPC § 2900 would be

protected by a complete psychological evaluation to evaluate respondent's mental fitness to practice safely and, if she is competent to practice safely, the issuance of a properly conditioned probationary registration. Conditions shall include a course in ethics by reason of Finding 8 and continuing therapy by reason of Finding 13.

ORDER

IT IS ORDERED THAT Jane Tye be issued a registration under the following conditions:

A. As a condition precedent to a registration being issued, respondent shall undergo a complete psychological evaluation (and psychological testing, if deemed necessary) by a Board-appointed California-licensed psychologist. Respondent shall sign a release that authorizes the evaluator to furnish the Board a current DSM IV diagnosis and a written report regarding the respondent's judgement and/or ability to function independently as a psychologist with safety to the public, and whatever other information the Board deems relevant to the case. The completed evaluation is the sole property of the Board. The evaluation should not be disclosed to anyone not authorized by the Board or by court order. Respondent shall pay all costs associated with the psychological evaluation.

B. If respondent fully complies with [A] above and the Board accepts that Ms. Tye is mentally fit to practice safely as a psychological assistant, and if respondent satisfies all other application requirements for registration, she shall be issued a registration as a psychological assistant, such registration shall be immediately revoked, the revocation shall be stayed and respondent placed on probation subject to the following terms and conditions:

1. Probationary Period

Respondent is placed on probation for a period of five (5) years, unless extended pursuant to another condition of probation. Probation shall begin on the date applicant is issued a probationary registration.

2. Psychological Evaluation

On a periodic basis as may be required by the Board or its designee, respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by a Board-appointed California-licensed psychologist. Respondent shall sign a release that authorizes the evaluator to furnish the Board a current DSM IV diagnosis and a written report regarding the respondent's judgement and/or ability to practice safely on the public as a psychological assistant, and whatever other information the Board deems relevant to the case. The completed evaluation is the sole property of the Board. The evaluation should not be disclosed to anyone not authorized by the board or by court order.

If the Board concludes from the results of the evaluation that respondent is unable to practice safely, upon notice by the Board, respondent shall immediately cease accepting new patients and, in accordance with professional standards, shall appropriately refer/terminate existing patients within 30 days and shall not resume practice until a Board-appointed evaluator determines that respondent is safe to practice. During this suspension period, probation will be tolled and will not commence again until the suspension is completed.

Respondent shall pay all costs associated with the psychological evaluation. Failure to pay costs will be considered a violation of the probation order.

3. Practice Monitor/Billing Monitor

Within 90 days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval, the name and qualifications of a psychologist who has agreed to serve as a practice monitor/billing monitor. The monitor shall 1) be a California-licensed psychologist with a clear and current license; 2) have no prior business, professional, personal or other relationship with respondent; and 3) not be the same person as respondent's therapist. The monitor's education and experience shall be in the same field of practice as that of the respondent. The monitor may be the person supervising respondent as a psychological assistant.

Once approved, the monitor shall submit to the Board or its designee a plan by which respondent's practice shall be monitored. Monitoring shall consist of a least one hour per week of individual face to face meetings and shall continue during the entire probationary period. The respondent shall provide the monitor with a copy of this Decision and access to respondent's fiscal and/or patient records. Respondent shall obtain any necessary patient releases to enable the monitor to review records and to make direct contact with patients. Respondent shall execute a release authorizing the monitor to divulge any information that the Board may request. It shall be respondent's responsibility to assure that the monitor submits written reports to the Board or its designee on a quarterly basis verifying that monitoring has taken place and providing an evaluation of respondent's performance.

Respondent shall notify all current and potential patients of any term or condition of probation that will affect their therapy or the confidentiality of their records (such as this condition, which requires a practice monitor/billing monitor). Such notifications shall be signed by each patient prior to continuing or commencing treatment.

If the monitor quits or is otherwise no longer available, respondent shall get approval from the Board for a new monitor within 30 days. If no new monitor is approved within 30 days, respondent shall not practice until a new monitor has been approved by the Board or its designee. During this period of non-practice, probation will be tolled and will not commence again until the period of non-practice is completed.

Respondent shall pay all costs associated with this monitoring requirement. Failure to pay these costs shall be considered a violation of probation.

4. Psychotherapy

Within 90 days of the effective date of this Decision, a therapist shall be selected by the respondent for approval by the Board. The therapist shall 1) be a California-licensed psychologist with a clear and current license; 2) have no previous business, professional, personal, or other relationship with respondent; and 3) not be the same person as respondent's monitor. Respondent shall furnish a copy of this Decision to the therapist. Psychotherapy shall, at a minimum, consist of one hour per week over a period of 26 weeks after which it may continue or terminate upon the written recommendation of the therapist with approval by the Board or its designee. The Board or its designee may order a re-evaluation upon receipt of the therapist's recommendation.

Respondent shall execute a release authorizing the therapist to provide to the Board or its designee any information the Board deems appropriate, including quarterly reports of respondent's therapeutic progress. It shall be respondent's responsibility to assure that the required quarterly reports are filed by the therapist in a timely manner. If the therapist notifies the Board that the therapist believes the respondent cannot continue to safely render psychological services, respondent shall immediately cease accepting new patients and, in accordance with professional standards, shall appropriately refer/terminate existing patients within 30 days and shall not resume practice until a Board-appointed evaluator determines that respondent is again safe to practice. During this period of non-practice, probation shall be tolled and will not commence again until the period of non-practice is completed.

If, prior to the termination of probation, respondent is found not to be mentally fit to resume the practice of psychology without restrictions, the Board shall retain continuing jurisdiction over the respondent's registration and the period of probation shall be extended until the Board or its designee determines that the respondent is mentally fit to resume the practice of psychology without restrictions.

Cost of psychotherapy is to be paid by the respondent.

5. Ethics Course

Within 90 days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval a course in laws and ethics as they relate to the practice of psychology. Said course must be successfully completed at an accredited educational institution or through a provider approved by the Board's accreditation agency for continuing education credit. Said course must be taken and completed within one year from the effective date of this Decision. This course must be in addition to any continuing education courses that may be required for

registration renewal. The cost associated with the law and ethics course shall be paid by the respondent.

6. Probation Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation. Such costs shall be payable to the Board of Psychology at the end of each fiscal year (June 30). Failure to pay such costs shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to repay probation monitoring costs.

7. Obey All Laws

Respondent shall obey all federal, state, and local laws and all regulations governing the practice of psychology in California including the ethical guidelines of the American Psychological Association. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence.

8. Quarterly Reports

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board or its designee, stating whether there has been compliance with all the conditions of probation. Quarterly reports attesting to non-practice status are to be submitted if probation is tolled.

9. Probation Compliance

Respondent shall comply with the Board's probation program and shall, upon reasonable notice, report to the assigned Board of Psychology probation monitor. Respondent shall contact the assigned probation monitor regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with 1) complainants associated with the case; 2) Board members or members of its staff; or 3) persons serving the Board as expert evaluators.

10. Interview with Board or Its Designee

Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

11. Changes of Employment

Respondent shall notify the Board in writing, through the assigned probation monitor, of any and all changes of employment, location, and address within 30 days of such change.

12. Tolling for Out-of-State Practice, Residence or In-State Non-Practice

In the event respondent should leave California to reside or to practice outside the State or for any reason should respondent stop practicing psychology in California, respondent shall notify the Board or its designee in writing within ten days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Sections 2902 and 2903 of the Business and Professions Code. During periods of non-practice, the probationary period is tolled and respondent's license or registration shall be placed on inactive status. The probationary period will not commence again until respondent activates his or her license or registration and resumes practicing psychology in the state of California. However, the Board may require respondent to complete certain terms of probation that are not associated with active practice and respondent will be required to pay cost recovery and restitution as ordered.

13. Employment and Supervision of Trainees

If respondent is or becomes licensed as a psychologist, he/she shall not employ or supervise or apply to employ or supervise psychological assistants, interns or trainees during the course of this probation.

14. Future Registration or Licensure

If respondent is registered as a psychological assistant or registered psychologist and subsequently obtains other psychological assistant or registered psychologist registrations or becomes licensed as a psychologist during the course of this probationary order, this Decision shall remain in full force and effect until the probationary period is successfully terminated. Future registrations or licensure shall not be approved, however, unless respondent is currently in compliance with all of the terms and conditions of probation.

15. Violation of Probation

If respondent violates probation in any respect, the Board may, after giving respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended


until the matter is final. No Petition for Modification or Termination of Probation shall be considered while there is an Accusation or Petition to Revoke Probation pending against respondent.

16. Completion of Probation

Upon successful completion of probation, respondent's registration shall be fully restored.

This Decision shall become effective on January 12, 2003.

IT IS SO ORDERED this 13th day of December, 2002.


PAMELA HARMELL, Ph.D.
President
Board of Psychology